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No. 89-1145

FILED

FEB 15 1990

JOSEPH F. SPANIOLO, JR.
CLERK

IN THE
Supreme Court of the United States

OCTOBER TERM, 1989

LINDA McCracken,

Petitioner

v.

CITY OF COLLEGE PARK, GEORGIA, et al.

Respondents.

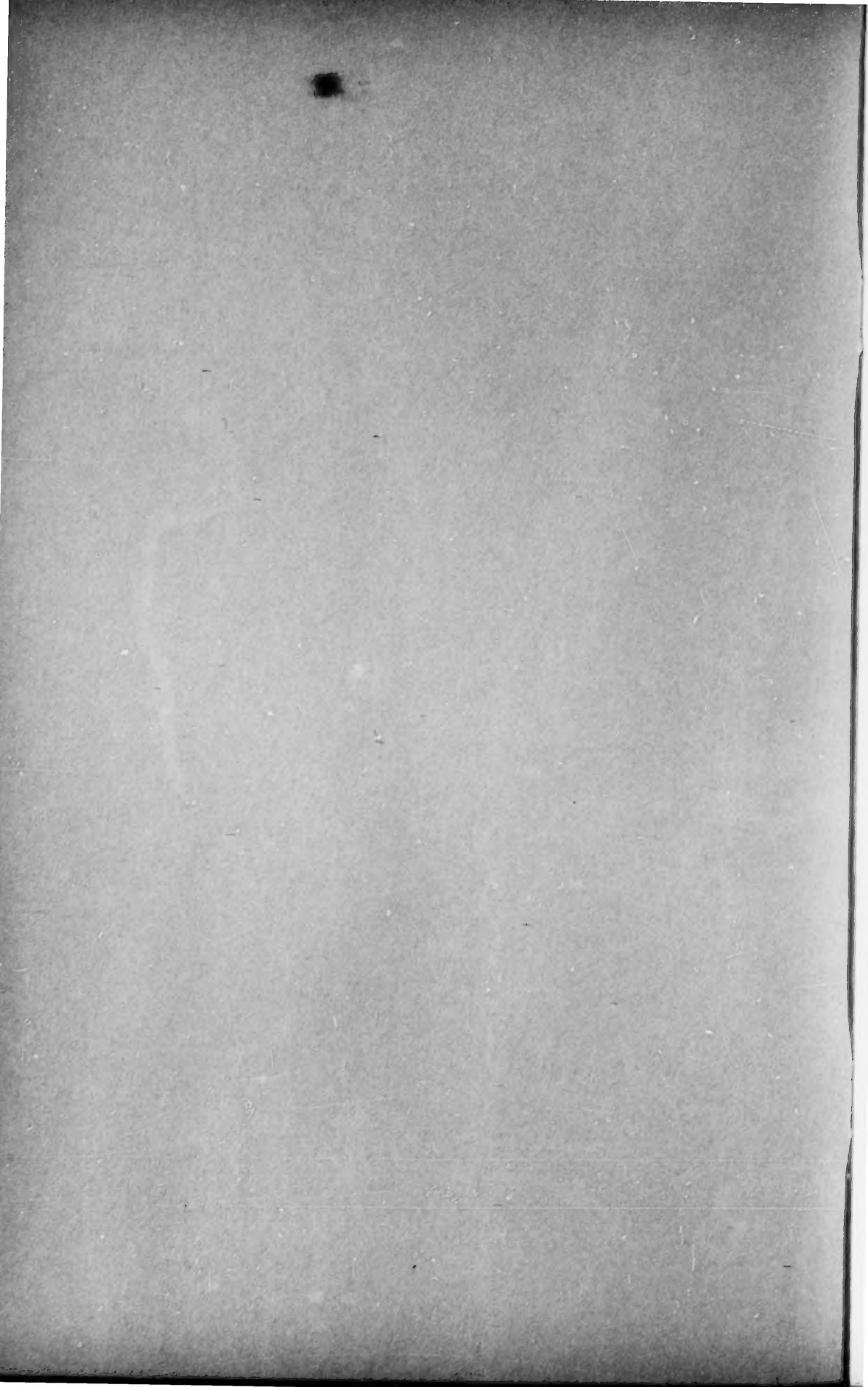
**RESPONDENTS' BRIEF IN OPPOSITION TO THE
PETITION FOR WRIT OF CERTIORARI TO THE
SUPREME COURT OF GEORGIA**

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February 15, 1990



QUESTIONS PRESENTED

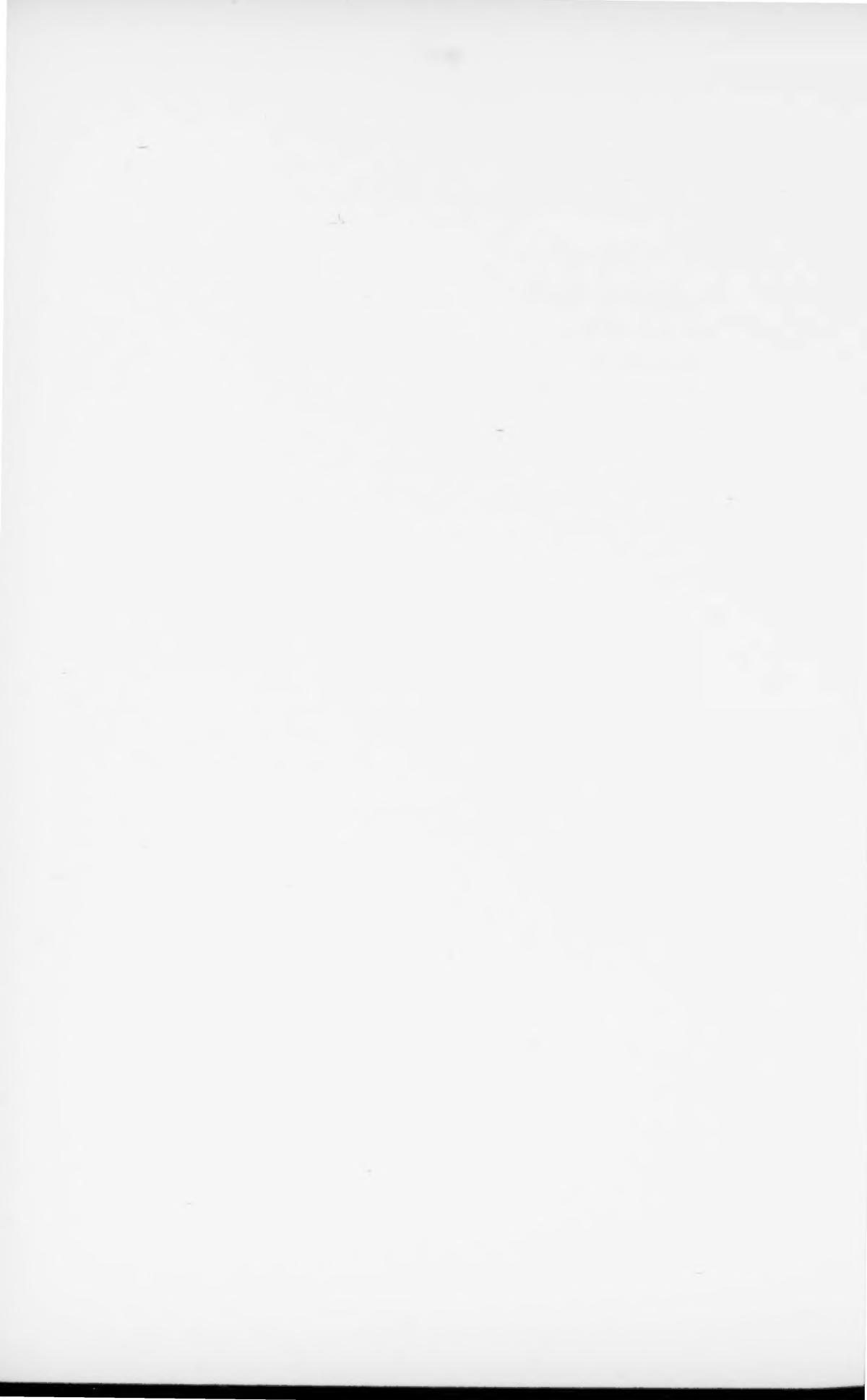
1. The Respondents maintain that none of the three alleged questions presented appear to the Court in a justiciable manner, as the ruling appealed from did not address any of these issues.

TABLE OF CONTENTS

	Page
Questions Presented	i
Table of Authorities.....	iii
Opinion Below	1
Jurisdiction	1
Ordinance Involved	1
Statement of the Case.....	2
Proceedings in Georgia State Courts	2
Reasons for not Granting the Writ.....	3
Conclusion.....	6
Appendix "A"	1a
Appendix "B"	2a
Appendix "C"	3a

TABLE OF AUTHORITIES

	Page
Unpublished Opinion, Court of Appeals of the State of Georgia, Application No. 1984, Order on Denial of Application for Discretionary Appeal, September 24, 1987.....	2a
Unpublished Opinion, Court of Appeals of the State of Georgia, Application No. 1984, Order on Denial of Rehearing on Denial of Application for Discretionary Appeal, October 6, 1987.....	3a



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OPINION BELOW

The opinion of the Supreme Court of Georgia is reported as *McCracken v. City of College Park*, 259 Ga. 490, and is reproduced as Appendix "A" to Petitioner's Brief.

JURISDICTION

The Respondents deny that 28 U.S.C. § 1245(i) is a jurisdictional authorization for any matter presented hereunder.

ORDINANCE INVOLVED

Respondents deny that an application of § 3-45(d) of the Code of Ordinances of College Park is involved in this petition.

STATEMENT OF THE CASE

Petitioner operated a gasoline/convenience store in College Park. On May 12, 1987, an employee of the Petitioner failed to check the identification of purchaser of alcoholic beverages, such failure to check the identification resulting in the sale of alcoholic beverages to an individual under the age of 19 years, a violation of state law of the State of Georgia. The employment and supervision of such an individual by the Petitioner subjected her to suspension of her license to sell alcoholic beverages in the city limits of the City of College Park pursuant to the terms of § 3-45(d) of the Code of Ordinances of the City of College Park (see Appendix D of Petitioner's Brief).

On May 27, 1987, a hearing was held by the Mayor and Council of the City of College Park on the issue of whether or not Petitioner's license to sell alcoholic beverages should be suspended for an appropriate period of time. Thereafter, the Mayor and Council suspended Petitioner's license for 120 days. A Petition for Certiorari was filed with the local trial court of the State of Georgia challenging the authority of the City of College Park to suspend Petitioner's license and raising the issues purportedly raised in this Petition for Writ of Certiorari.

PROCEEDINGS IN GEORGIA STATE COURTS

Petitioner filed an action in certiorari seeking to review the decision of the Mayor and Council. This petition for certiorari review was denied by order of the judicial authority of the Fulton County Superior Court on July 31, 1987 (see Appendix "A"). The Petitioner sought discretionary appeal pursuant to the procedures of the State of Georgia. This application for discretionary appeal was

denied by the Court of Appeals of the State of Georgia on September 24, 1987 (see Appendix "B").

Finally, Petitioner's Motion for Rehearing on the Denial of Discretionary Appeal was denied by the Court of Appeals of the State of Georgia on October 6, 1987 (see Appendix "C").

The action in equity and for damages referred to in the Petitioner's Brief, and which forms the subject matter of this petition, was resolved by both the trial court and the appellate courts of the State of Georgia by the application of the principles of *res adjudicata*.

REASONS FOR NOT GRANTING THE WRIT

While the Petitioner represents that the case of *McCracken v. City of College Park*, as contained in Appendix "A" of her brief, litigated the issue of the constitutionality of the ordinance of the City of College Park, a closer examination of the same will reveal that two issues were decided in that case; (1) whether or not the trial court abused its discretion in lifting a default by the City of College Park; and (2) whether or not the Petition for Certiorari referred to above resolved the issues presented in Petitioner's case by principles of *res adjudicata*.

It is the Respondent's position that the decision adjudicating the constitutionality of the ordinance of the City of College Park became final upon the denial of motion for rehearing on October 6, 1987. As such, no Petition for Certiorari was filed in this court within the applicable time frames and that decision is not subject to review.

The three questions presented in the Petitioner's brief concerning the issues of due process and vicarious liability are not justiciable in this court in these proceedings. There are serious jurisdictional defects present which would work to preclude review by this court on the purported questions presented by the Petitioner.

As a consequence of the suspension by the Mayor and Council of Petitioner's license to sell alcoholic beverage for 120 days, the Respondents have been subjected to the following legal actions:

- 1) Complaint for Equity and Damages;
- 2) Petition for Certiorari Review of the decision of the Mayor and Council;
- 3) Application for Discretionary Appeal on the Petition for Certiorari;
- 4) Petition for Rehearing on the Denial of Application for Discretionary Appeal on the Denial of Certiorari Review;
- 5) Appeal to the Supreme Court of Georgia on the grant of Summary Judgment on the question of res adjudicata;
- 6) Petition for Writ of Certiorari to the Supreme Court of the United States on the Complaint for Equity and Damages.

In addition to unreasonably pursuing three different avenues of appellate review in three different courts, and their Petition for Writ of Certiorari filed with this Court, the petitioner has compared the activities of the Mayor

and Council of the City of College Park to the activities of the "SS and occupied countries during World War II where, in order to punish parties and activities, they would arbitrarily execute citizens at random . . ." (Petitioner's Brief, p. 4.) She also, indirectly, accuses the Mayor and Council of the City of College Park of misconduct and punishment without proof of guilt in spite of the fact that the Petitioner has had complete due process on all issues. Finally, the Petitioner, indirectly, accuses the Mayor and Council of the City of College Park of being "either corrupt or inept." (Petitioner's Brief, p. 5.)

In light of the unreasonable litigation of the Petitioner, the complete failure of her Petition for Certiorari to the Supreme Court of Georgia to present any justiciable issue to this Court, and the scurrilous, unfounded, and potentially libelous statements of the Petitioner contained in the Petition, the respondents respectfully request that this Court, pursuant to Rule 49, award the respondent appropriate damages.

CONCLUSION

For the foregoing reasons, this Petition for Certiorari should be denied.

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APPENDICES

Appendix A

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

LINDA MCCRACKEN, ET AL., :

Petitioners, :

:

-vs-

: CIVIL ACTION FILE

: NO. D-42957

T. OWEN SMITH, ET AL., :

Respondents. :

ORDER

The within and foregoing Petition for Writ of Certiorari having been brought before this Court by Petitioners and after hearing argument of counsel and reviewing all appropriate materials,

IT IS HEREBY CONSIDERED, ORDERED and ADJUDGED, that the aforesaid Petition be and the same is hereby denied and the decision of the City of College Park is hereby affirmed.

AND IT IS SO ORDERED.

This 31st day of July, 1987.

/s/ Luther Alverson
Luther Alverson
Judge, Fulton Superior Court
Atlanta Judicial Circuit

cc: Glenn Zell
George Glaze

Appendix B

COURT OF APPEALS
OF THE STATE OF GEORGIA

Atlanta, September 24, 1987

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

APPLICATION NO. 1984

LINDA MC CRACKEN ET AL V. T. OWEN SMITH
ET AL

Upon consideration of the Application for a Discretionary Appeal, it is ordered that it be hereby denied.

D-42957

24-26

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta SEP 24, 1987

I certify that the above is a true extract from the minutes of the Court of Appeals of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

/s/ Victoria McLaughlin
Clerk.

Appendix C

COURT OF APPEALS
OF THE STATE OF GEORGIA

Atlanta, October 6, 1987

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

APPLICATION NO. 1984

LINDA MC CRACKEN ET AL V. T. OWEN SMITH
ET AL

Upon consideration of the motion for a rehearing filed in this case, it is ordered that it be hereby denied.

D-42957

24-26

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta OCT 6, 1987

I certify that the above is a true extract from the minutes of the Court of Appeals of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

/s/ Victoria McLaughlin
CLERK.